

### **REMARKS**

This Amendment is being filed in response to, and within three (3) months of, the Office Action mailed October 2, 2006. Claims 9-26 have been withdrawn. Applicant has herein amended Claims 1, 27 and 33. Accordingly, Claims 1-8 and 27-35 are pending.

### **GENERALLY**

Initially, Applicant would like to thank Examiner Fidei for holding a telephone interview with Applicant's counsel, Vic Lin, on November 6, 2006. Applicant has enclosed a written Interview Summary herewith.

### **DRAWINGS**

The drawings were objected to on the grounds of not showing the continuous weld. As discussed in the telephone interview, the continuous weld is shown as a curved weld 30 in Figure 7. Applicant has herein submitted a revised Figure 7 to more accurately depict the presence of the continuous, curved weld 30 in Figure 7, and revised the specification to accurately state this feature.

### **CLAIM REJECTIONS – CLAIMS 1-8, 27-35 – 35 USC § 103(a)**

All of the pending claims have been rejected on the grounds of obviousness under 35 USC § 103(a). In particular, Claims 1-3, 7, 8 and 27-35 were rejected over Samuels (6,047,825) in view Yasha Heifetz (3,312,579); Claims 1-3, 7, 8 and 27-35

over Farrell et al (6,053,313) in view Yasha-Heifetz; and Claims 4,5,6 and 33-35 over Jaeschke et al (4,333,322) over the prior as applied to the claims above, and further in view of Jaeschke et al. (4,333,322).

**A. Copying by Multiple Competitors Is Strong Evidence of  
Nonobviousness**

The Federal Circuit has repeatedly approved of copying as evidence of nonobviousness. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 679, 7 USPQ2d 1548, 1554 (Fed. Cir. 1988) ("Copying is an indicium of nonobviousness, and is to be given proper weight.").

Here, Applicant's claimed invention is being copied not by a single competitor, but by multiple competitors. Attached hereto as Exhibit 1 is a copy of a data sheet of a medical dispenser packaging provided by Optinova available on the Internet at [http://www.optinova.fi/cardio\\_vascular.pbs](http://www.optinova.fi/cardio_vascular.pbs). The data sheet states that "Optinova provides dispensers welded or assembled with clips . . ."

A second competitor named Acccoat also provides clipless dispensers with welded coiled portions. Attached hereto as Exhibit 2 is a copy of Acccoat's website wherein the graphic on the right side shows a welded, clipless dispenser.

The multiple instances of copying in the marketplace clearly shows that the Applicant's claimed invention is not obvious. It bears emphasis that the copying is occurring specifically with respect to coiled packaging for medical and surgical devices, namely, the same field being claimed by Applicant.

**B. The Cited Combination of Samuels In View of Yasha-Heifetz Teaches Away from the Claimed Invention and Fails to Disclose All Claimed Limitations**

As discussed in the telephone interview with the examiner, Samuels discloses a tube that is intended to be separated from its original coiled configuration, and subsequently straightened for usage. As shown in Figure 4, the “clamps (FIGS. 1A and 1B) are easily removable from flexible pipe 12 so that the latter may be straightened or placed in a more convenient configuration. For example the flexible pipe 12 may be placed in a configuration roughly outlining a patient 50 laying on a procedure table 52, as illustrated in FIG. 4.” (col. 3:63 – col. 4:1). Thus, Samuels teaches away from Applicant’s claimed invention which requires that the coiled tube portions remain in a fixed, non-peelable relationship.

Furthermore, the cited combination fails to disclose or suggest all the limitations recited in the independent claims, particular the feature of curved thermal welds. Yasha-Heifetz only discloses parallel straight welds between a plurality of tubes 10 which “are laid side by side in parallel tangent relationship in a tray 13 which holds the tubes against each other and supports them from beneath.” The tubes are moved by a conveyor means 14 which carry the tubes along in a straight manner. Thus, Yasha-Heifetz lacks any disclosure or motivation to provide a curved thermal weld between coiled tube portions.

**C. Omission of an Element with Retention of the Elements Function Is an Indicia of Nonobviousness**

Claims 1-3, 7, 8 and 27-35 were rejected as being unpatentable over Farrel et al. in view of Yasha-Heifetz. Farrel et al. discloses a conventional prior art coiled dispenser having clips. In fact, Farrel et al. is so unconcerned with the coiled packaging that the Figures do not even include a numeral to indicate the prior art clips holding the package in a coiled configuration. In this regard, the Farrel et al. reference is no different than the Prather et al. reference (US 5,247,942) cited in the prior Office Action. Just like Farrel et al., Prather et al. did not provide any teaching regarding the holding of the tube in a coiled configuration. Applicant's response to the prior Office Action successfully overcame the Prather et al. reference.

Even worse than the Prather et al. reference which at least acknowledged the presence of the clips with the numeral "18" (See Figure 1), the currently cited Farrel et al. reference does not even call out the clips with any numerals. Therefore, how can a reference which is completely unconcerned with maintaining a coiled configuration provide any teaching or motivation for a novel structure of a coiled dispenser packaging?

MPEP § 2144.04 states the omission of an element with retention of the element's function is an indicia of unobviousness, citing *In re Edge*, 359 F.2d 896, 149 USPQ 556 (CCPA 1966). Here, Applicant's claimed invention omits the clips in the prior art coiled packaging, but retains the function of the clips which is to maintain the package in a coiled configuration.

The citing of Farrel et al. as a primary reference for a § 103 rejection only further supports this assertion:

- that clips in prior art packages served the function of keeping the package in a coiled configuration,
- that the thermal welds in the claimed invention serve the same function as the clips in the prior art, namely, to keep Applicant's package in a coiled configuration, but do so even more effectively than the clips in the prior art which may be removed (Applicant's structure is claimed as being fixed and non-peelable), and
- that Applicant's claimed invention omit the problematic clips in the prior art.

In fact, the citing of all prior art references in all of the Office Actions to date that show a medical packaging that is held in a coiled configuration by a clip only further supports the nonobviousness of Applicant's claimed invention by omitting the clips while retaining their function.

Furthermore, Applicant has herein amended the claims to add further novel features not shown or suggested in the cited combinations. As discussed above, Applicant has specifically recited that the thermal welds are curved. There is absolutely no teaching or suggestion in Farrel et al. or in Yasha-Heifetz to provide such a feature. Accordingly, the cited combination also fails to teach or suggest all the claimed limitations.

**SUMMARY**

In view of all of the foregoing, including the evidence of copying by competitors, the evidence of long-felt need in the industry, and the arguments above concerning nonobviousness, Applicant respectfully submits that all pending independent claims are allowable over the cited prior art references. Applicant further submits that the dependent claims are allowable for the additional features recited therein.

Applicant encourages the Examiner to telephone the undersigned attorney if it appears that a telephone conference would facilitate allowance of the application.


I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 22, 2006

by Eric Hoover



Signature

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**Enclosures:** Exhibit 1  
Exhibit 2  
Replacement Figure 7 (Sheet 3/5)  
Interview Summary